

STATE OF MONTANA
DEPARTMENT OF LABOR AND INDUSTRY
HEARINGS BUREAU

IN THE MATTER OF THE WAGE CLAIM)	Case No. 978-2005
OF PATRICIA F. PAUL,)	
)	
Claimant,)	FINDINGS OF FACT;
)	CONCLUSIONS OF LAW;
vs.)	AND ORDER
)	
HEART BUTTE PUBLIC SCHOOL)	
DISTRICT NO. 1,)	
)	
Respondent.)	

* * * * *

I. INTRODUCTION

In this matter, Respondent Heart Butte (Heart Butte) School District appeals a determination of the Wage and Hour Unit that found that Claimant Patricia Paul was due additional wages.

Hearing Examiner Gregory L. Hanchett convened a contested case hearing in this matter on June 1, 2005. Ross Cannon, attorney at law, represented Paul. Debra Silk, attorney at law, represented Heart Butte. The parties stipulated to the admission of Documents 1 through 415, contained in the Wage and Hour Unit file. In addition, Heart Butte's Exhibits A, B, C, D, G, I, J, L, and M were admitted into evidence. At the hearing, Paul, Clarence Comes At Night, Elizabeth Cox, Anita DeRoche, Jolene Vance, Shannon Day Chief, and Glenna Hall testified under oath.

The parties filed their post-hearing memoranda on August 31, 2005 and the record closed. Having considered the evidence presented at hearing as well as the arguments and the post-hearing memoranda, the hearing examiner makes the following findings of fact, conclusions of law, and final agency decision.

II. ISSUE

Is Paul an exempt administrative employee under the Fair Labor Standards Act?

III. FINDINGS OF FACT

1. The parties stipulated, and the hearing examiner finds, that the employer in this matter is subject to the Fair Labor Standards Act.

2. Paul began working as the Clerk of the Heart Butte School District in November 2002. The school board discharged her in September 2004.

3. Paul's employment with the school district was embodied in a written employment contract (Exhibit G). Under the terms of the agreement, Paul was compensated at an annual salary of "\$34,000.00." During her tenure as district clerk, Paul was consistently paid \$1,307.69 twice per month until April 23, 2004, at which time she began to pay herself additional amounts as discussed below. Paul was required to perform the duties of the district clerk as described in the district's job description manual. The employment agreement was signed annually by Paul and the school board during her employment as the district clerk.

4. Some of the more salient parts of the district's job description for the clerk position provided that the clerk (1) acted as custodian of all funds belonging to the school, (2) invested all district funds, (3) attended and kept minutes of all school board meetings, (4) prepared trustee reports for the district, (5) prepared monthly reports on the district's fiscal status, (6) rendered an annual report on the district's financial status at the end of each fiscal year, (7) prepared payroll, (8) kept full and accurate records of the district's personnel leave and (9) assisted the superintendent in budgeting for the district's elementary school and high school.

5. Paul carried out her duties as outlined by the position description for her job. Paul received all district funds, deposited and invested district funds and paid out district pay warrants. She apparently had the discretion to determine the order in which to pay the district warrants.

6. Paul worked with the school board to prepare school board agendas and to prepare packets for Board meetings. She prepared trustee reports, prepared state and federal reports, and maintained all files on state and federal programs in which the district was involved. She was required by her position description to keep the school board's finances in order and she undertook that role. She worked with the school board to develop the district budget each year and prepared an annual report on the district's financial status as required by her position description. She also completed the pay roll for the district. With respect to the payroll, Paul had the duty of determining how to administer the payroll to ensure employees were paid appropriately and timely.

7. During at least a portion of Paul's tenure, the school district had been determined to be an "At Risk" district by the Montana Office of Public Education (OPI). Paul was given the responsibility of ensuring that the school district stayed in compliance with the financial requirements imposed by OPI as a result of being in "At Risk" status. The school board did not tell her how to do this job; rather, Paul was free to set her own means to reach this goal. In addition, by statute, Paul administered the district school board elections.

8. Paul's discretion to determine how to take the corrective actions required by OPI is demonstrated by her failure in some instances to meet the OPI goals. For example, as the school district clerk, Paul was required to reconcile cash expenditures with the county treasurer. She failed to do this for approximately one and one half years. It appears that because she did not have any direct supervision, she never carried out this requirement.

9. Paul, without the input of the Board, decided that she should be paid for her overtime hours. On May 7, 2004, she began to pay herself for overtime that she had undertaken in completing her tasks. From that date forward, she regularly paid herself for her overtime hours until the date she was discharged.

10. At one point during her tenure, Paul's mother became seriously ill. In order to better care for her mother, Paul decided that she would work from home. She did this for approximately two weeks. This, too, was ostensibly a unilateral decision.

IV. DISCUSSION¹

The parties stipulated that the school district is subject to the Fair Labor Standards Act (FLSA). Among other things, FLSA requires employers to pay nonexempt employees at a rate of one and one half the employees' regular rate of pay for all hours worked in excess of 40 hours per week. 29 U.S.C. §207 (a)(1). Bona fide executive and administrative employees are exempt from the overtime requirements imposed under FLSA. 29 U.S.C. §213(a)(1).

The burden of proving an exemption rests on the employer who asserts it. *Kemp v. Board of Personnel Appeals*, 1999 MT 255, 296 Mont. 319, 989 P.2d 317. The employer must do so by presenting evidence to show that the employee falls

¹Statements of fact in this discussion are incorporated by reference to supplement the findings of fact. *Coffman v. Niece* (1940), 110 Mont. 541, 105 P.2d 661.

“plainly and unmistakably within the exemption’s terms.” *Id. at* ¶16, *citing Public Employees Ass’n v. D. of T.*, 1998 MT 17, 287 Mont. 229, 954 P.2d 21. Questions involving exemption from overtime are narrowly construed to carry out the purposes of the FLSA. *Reich v. Wyoming* (10th Cir., 1993), 993 F.2d 739, 741.

29 CFR 541.2(a) defines an exempt administrative employee as a person whose primary duties consist of either “(1) the performance of office or nonmanual work directly related to management policies or general business operations of his employer or his employer's customers, or (2) the performance of functions in the administration of a school system, or educational establishment or institution, or of a department or subdivision thereof, in work directly related to the academic instruction or training carried on therein.”²

29 CFR 541.205(a) describes “work directly related to management policies or general business operations of his employer” as activities relating to the administrative operations of a business. It includes work such as “advising the management, planning, negotiating, representing the company, purchasing, promoting sales, and business research and control.” 29 CFR 541.205(b)

An employee with a salary of at least \$250.00 weekly “whose primary duty consists of the performance of work described in paragraph (a) of this section, which includes work requiring the exercise of discretion and independent judgment,” is deemed to meet all requirements of the administrative exemption test. 29 CFR 541.2(e)(2). This is known as the short test. *Spinden v. GS Roofing Products*, (8th Cir., 1996) 94 F.3d 421, 426.³ While the long test requires that discretion and independent judgment be

²Paul maintained at hearing, and asserted in her post hearing brief (See Exhibit 1, Paul’s closing brief) that she was due money for work completed through July 26, 2004. The U.S. Department of Labor adopted new regulations to define and delimit the term “bona fide administrative employee” effective August 23, 2004, approximately one month after the last date for which Paul claims to be due compensation. 69 Fed. Reg. 22122 (April 23, 2004). Paul in her brief makes reference only to the new regulations which were not in effect during the dates of her claim. While the numbering of the regulations has changed, the substantive language of the rules with respect to the administrative exemption has not changed (with the exception of the “short test,” discussed below).” Thus, the practical implications for Paul’s case (again, with the exception of the applicability of the short test) are nil. However, the hearing examiner is constrained to apply the old regulations and will do so.

³ The new regulations have substantially increased the threshold salary requirement for meeting the short test. *See*, 29 CFR 541.601 effective August 23, 2004. Again, however, because Paul seeks wages due to her prior to the effective date of the new regulations, the new higher amounts have no applicability to this case.

exercised “customarily and regularly,” the short test only requires that the primary duty “include” the exercise of discretion and independent judgment. *Shaw v. Prentice Hall*, (S.D. Ind.), 977 F. Supp. 909, 916, n. 4.

Paul’s annual salary was \$34,000.00, which exceeded the \$250.00 per week requirement for the short test.⁴ Thus, the real question in this case is whether or not Paul fit within the prescriptions of 29 CFR 541.2 (a). The plain and unmistakable evidence in this matter shows that all of her functions were office work directly related to management policies or general business operations of the district or its customers and that she completed work which required exercise of discretion and judgment.

Paul administered the school board elections and determined the means and methods of administering those elections, subject to state regulation. Paul engaged in nothing but office work for the district. When she decided that it would be more advantageous for her to work from her home, she did so without approval from a board member or administrator. When she decided that she was not being paid enough for the hours she was working, she exercised her own discretion and unilaterally paid herself overtime. She completed payroll and payed out warrants for services rendered to the school district. She decided which projects to work on and her decisions directly impacted the district’s “At Risk” status. She prepared financial reports and the school’s budget reports in order to perform her function of keeping the school board apprized of the financial status of the district. The school board did not supervise the day to day particulars of completing her work. The testimony of the district’s witnesses and, to an extent, that of Paul herself, proved that Paul performed office work directly related to general business operations of the district and exercised discretion in the means employed to complete that work. The school district proved that Paul met the short test and was exempt under 29 CFR 541.2 (a).

V. CONCLUSIONS OF LAW

1. The State of Montana and the Commissioner of the Department of Labor and Industry have jurisdiction. Mont. Code Ann. § 39-3-201 et seq.; *State v. Holman Aviation* (1978), 176 Mont. 31, 575 P.2d 925.

2. Heart Butte School District at all times material to this claim was an enterprise engaged in interstate commerce and subject to FLSA requirements.

⁴Paul conceded on page 12 of her post hearing brief that she was compensated at least \$455.00 in salary per week and would thus meet the threshold of the salary requirement under the new regulations for application of the “long test.”

3. Paul was at all times pertinent to this case an exempt administrative employee under the FLSA.

4. Because Paul was an exempt employee, she is not entitled to FLSA protection and her claim must be dismissed.

5. Because Paul was an exempt administrative employee, the dispute over the actual number of hours she worked is moot.

VI. ORDER

Paul's claim is hereby dismissed.

DATED this 26th day of September, 2005.

DEPARTMENT OF LABOR & INDUSTRY
HEARINGS BUREAU

By: /s/ GREGORY L. HANCHETT
GREGORY L. HANCHETT
Hearing Officer

NOTICE: You are entitled to judicial review of this final agency decision in accordance with Mont. Code Ann. § 39-3-216(4), by filing a petition for judicial review in an appropriate district court within 30 days of service of the decision. See also Mont. Code Ann. § 2-4-702.